

Update: Criminal Procedure Monograph 8—Felony Sentencing

Part II—Scoring the Statutory Sentencing Guidelines

8.5 Scoring an Offender’s Prior Record Variables (PRVs)

C. PRV 1—Prior High Severity Felony Convictions

1. Case Law Under the Statutory Guidelines

Insert the following text before the first paragraph in this sub-subsection near the bottom of page 23:

For purposes of scoring an offender’s prior record variables, “another state” does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant’s previous conviction in Canada was improperly counted for purposes of PRV 1). Language used in MCL 777.51(2) defines a “prior high severity felony conviction” as “a conviction for a crime listed in offense class M2, A, B, C, or D *or for a felony under a law of the United States or another state* corresponding to a crime listed in offense class M2, A, B, C, or D[.]” [Emphasis added.] *Price, supra* at 4. According to the *Price* Court: “The common understanding of ‘state’ in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of ‘another state’ in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not ‘a felony under a law of the United States or another state[.]’” *Price, supra* at 4–5.

Part II—Scoring the Statutory Sentencing Guidelines

8.5 Scoring an Offender’s Prior Record Variables (PRVs)

D. PRV 2—Prior Low Severity Felony Convictions

1. Case Law Under the Statutory Guidelines

Insert the following text on page 25 before the existing text in this subsection:

For purposes of scoring an offender’s prior record variables, “another state” does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant’s previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 2 is the same as the language used in PRV 1—the variable at issue in *Price*. MCL 777.52(2) defines a “prior low severity felony conviction” as “a conviction for a crime listed in offense class E, F, G, or H *or for a felony under a law of the United States or another state* corresponding to a crime listed in offense class E, F, G, or H[.]” [Emphasis added.] According to the *Price* Court: “The common understanding of ‘state’ in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of ‘another state’ in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not ‘a felony under a law of the United States or another state[.]’” *Price, supra* at 4–5.

Part II—Scoring the Statutory Sentencing Guidelines

8.5 Scoring an Offender’s Prior Record Variables (PRVs)

E. PRV 3—Prior High Severity Juvenile Adjudications

Insert the following text near the top of page 27 immediately before subsection (F):

For purposes of scoring an offender’s prior record variables, “another state” does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant’s previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 3 is the same as the language used in PRV 1—the variable at issue in *Price*. MCL 777.53(2) defines a “prior high severity juvenile adjudication” as “a juvenile adjudication for conduct that would be a crime listed in offense class M2, A, B, C, or D if committed by an adult or for conduct that would be a *felony under a law of the United States or another state* corresponding to a crime listed in offense class M2, A, B, C, or D if committed by an adult[.]” [Emphasis added.] According to the *Price* Court: “The common understanding of ‘state’ in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of ‘another state’ in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not ‘a felony under a law of the United States or another state[.]’” *Price, supra* at 4–5.

F. PRV 4—Prior Low Severity Juvenile Adjudications

Insert the following text immediately before subsection (G) on page 27:

For purposes of scoring an offender’s prior record variables, “another state” does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant’s previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 4 is the same as the language used in PRV 1—the variable at issue in *Price*. MCL 777.54(2) defines a “prior low severity juvenile adjudication” as “a juvenile adjudication for conduct that would be a crime listed in offense class E, F, G, or H if committed by an adult or for conduct that would be a *felony under a law of the United States or another state* corresponding to a crime listed in offense class E, F, G, or H if committed by an adult[.]” [Emphasis added.] According to the *Price* Court: “The common understanding of ‘state’ in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States.

Thus, the most obvious meaning of ‘another state’ in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not ‘a felony under a law of the United States or another state[.]’” *Price, supra* at 4–5.

Part II—Scoring the Statutory Sentencing Guidelines

8.5 Scoring an Offender’s Prior Record Variables (PRVs)

G. PRV 5—Prior Misdemeanor Convictions or Prior Misdemeanor Juvenile Adjudications

Insert the following text after the second bullet near the top of page 29:

For purposes of scoring an offender’s prior record variables, “another state” does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant’s previous conviction in Canada was improperly counted for purposes of PRV 1). Relevant language used in PRV 5 is the same as the language used in PRV 1—the variable at issue in *Price*. MCL 777.55(3)(a) defines “prior misdemeanor conviction” as “a conviction for a misdemeanor under a law of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States[.]” MCL 777.55(3)(b) defines “prior misdemeanor juvenile adjudication” as “a juvenile adjudication for conduct that if committed by an adult would be a misdemeanor under a law of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States[.]” According to the *Price* Court: “The common understanding of ‘state’ in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of ‘another state’ in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not ‘a felony under a law of the United States or another state[.]’” *Price, supra* at 4–5.

Part III—Recommended Minimum Sentences for Offenders Not Sentenced as Habitual Offenders

8.9 Felony Offenses Enumerated in MCL 777.18 (Offenses Predicated on an Underlying Felony)

B. Subsequent Controlled Substance Violations—MCL 333.7413(2) or (3)

Insert the following text before the **Note** at the top of page 89:

“Another state” for purposes of MCL 777.51(2) (one of the statutory instructions for scoring prior record variable 1 under the sentencing guidelines) does not include foreign states. *People v Price*, 477 Mich 1, 5 (2006) (the defendant’s previous conviction in Canada was improperly counted for purposes of PRV 1). The Court’s reasoning for its interpretation of “another state” as used in MCL 777.51(2) likely applies to the language used in MCL 333.7413(5) to define second or subsequent offenses. MCL 333.7413(5) states:

“[A]n offense is considered a second or subsequent offense, if, before conviction of the offense, the offender has at any time been convicted *under this article or under any statute of the United States or of any state* relating to a narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug.” [Emphasis added.]

According to the *Price* Court: “The common understanding of ‘state’ in Michigan law is a state of the United States, not a province of Canada and not a foreign state. Obviously, Michigan is one of the states that comprise the United States. Thus, the most obvious meaning of ‘another state’ in this context is one of the states, other than Michigan, that comprise the United States. A Canadian conviction is not ‘a felony under a law of the United States or another state[.]’” *Price*, *supra* at 4–5.

Part VII—Fines, Costs, Assessments, and Restitution

8.37 Restitution

Insert the following text after the first paragraph on page 169:

The amount of restitution ordered may include the cost of labor necessary to determine the value of property lost as a result of a defendant's criminal conduct, as well as the labor costs involved in replacing the lost property. *People v Gubachy*, ___ Mich App ___, ___ (2006).

Part IX—Sentence Departures

8.50 Upward Departures

B. Factors Involving the Offender

Insert the following text before the penultimate paragraph near the bottom of page 205:

A defendant's prior conviction in a foreign state—*not* one of the United States—is not properly counted under any of the prior record variables; therefore, under appropriate circumstances and subject to the requirements in *People v Babcock*, 469 Mich 247 (2003), a foreign conviction may constitute a substantial and compelling reason for departure from the guidelines range. *People v Price*, 477 Mich 1, 5–6 (2006).

